

Consideration of request to amend the Coastal Zone Management Federal Consistency Reviews Nonrule Policy Document, Natural Resources Commission Information Bulletin #43; Administrative Cause No. 13-025B

The DNR is requesting to modify the non-rule policy governing federal consistency reviews to change the process for completing the reviews from staff within the Lake Michigan Coastal Zone Program to the Environmental Unit with the Division of Fish and Wildlife.

Fish and Wildlife's environmental biologists conduct environmental reviews for projects for construction in a floodway permits as well as other building and road construction projects that involve federal or state money already. The National Environmental Policy Act requires an environmental review for impacts to natural resources for a construction project that will use federal money to determine whether or not there will be a significant environmental impact as the result of the project. Additional grant money from the state through the State Revolving Fund also requires a review to determine if there are any significant environmental impacts as the result of the project. Therefore, many projects for which a federal consistency determination is required already go through the environmental review process with the Division of Fish and Wildlife; these include building additions and demolitions, road widening and other road improvement projects, INDOT projects, and shoreline stabilization projects. When a construction in a floodway permit or other permit from the DNR is obtained, a separate federal consistency review is not required since the permit meets the federal consistency requirement.

The Environmental Review process includes a determination by the Division of Water as to whether or not a construction in a floodway permit is required and checking the Heritage Database to see if there are any endangered or rare species or state properties at or within ½ mile of the project site. Environmental biologists also review the project for impacts to fish, wildlife, and botanical resources. A letter is sent to the requestor informing them of the Division of Water permitting requirement (if there is one), the presence of any endangered or rare species located at or near the project site, the potential environmental impacts, and steps that should be taken to minimize those impacts.

Since the environmental review process already incorporates multiple divisions and provides a more thorough review of the project, the DNR believes that incorporating federal consistency in the environmental review process through the inclusion of language in the environmental review letter will save time and provide for more efficient government. This federal consistency review process will be much more thorough and efficient for both the federal and state agencies involved.

NATURAL RESOURCES COMMISSION
 Information Bulletin #43 (~~First~~ **Second** Amendment)
~~March 1, 2007~~ **June 1, 2013**

SUBJECT: CZM Coastal Zone Management Federal Consistency Reviews

A. Purpose

This information bulletin is ~~a nonrule policy document to summarize~~ **summarizes** implementation of "federal consistency" **reviews** by the Indiana Lake Michigan Coastal Program. **The reviews are coordinated through the Environmental Unit (the "Environmental Unit") of the Division of Fish and Wildlife, Department of Natural Resources.** Pursuant to "federal consistency" requirements, a federal action that has reasonably foreseeable effects on a land or water use of ~~Indiana's~~ **the Indiana** Lake Michigan Coastal Program Area must be consistent with the state laws described in Indiana's program. Federal activities are those that (1) are performed by a federal agency or its contractor; (2) require a federal license or another form of federal approval; or, (3) provide federal financial assistance to state or local government. ~~In adopting the information bulletin, The purpose of the natural resources commission~~ **this information bulletin is** to maximize benefits to the Lake Michigan Coastal Area while minimizing burdens to the state and its citizens, and the bulletin should be liberally construed to accomplish this purpose.

B. Overview

In general, a federal consistency review must be submitted:

- By a federal agency conducting an activity that will affect the Lake Michigan Coastal Area;
- By an applicant for a federal license for an activity that will affect the Lake Michigan Coastal Area; or
- By an applicant for a federal assistance project that will affect the Lake Michigan Coastal Area.

Not all federal agency, permit, or financial assistance actions require a federal consistency review and certification. Indiana reviews and lists actions deemed to potentially have an environmental impact to the coastal resources of the state. The list of activities that automatically require a consistency review is presented in Section III: Lists of Federal Activities Subject to Federal Consistency of this document. ~~The Lake Michigan Coastal Program~~ **Environmental Unit** may, however, require a consistency review and certification for unlisted activities if there is substantial belief that those activities would have more than a de minimis impact **on** Indiana's coastal resources.

The term "federal consistency" refers to the requirement of the Coastal Zone Management Act, (CZMA), 16 U.S.C. 1451, 1456 et seq., and implementing regulations at 15 CFR Part 930, that certain federal actions that affect any land or water use or natural resource of a state's coastal zone be consistent with the state's federally approved coastal program. Indiana's coastal program is based upon existing state laws, which will be considered as Indiana's enforceable policies for the purposes of federal consistency. Therefore, federal consistency will be required for the state

laws described in Chapter 5: Existing Management Authorities **of the Lake Michigan Coastal Zone Program Document** at <http://www.in.gov/dnr/lakemich/files/feis-iich5-ptvi.pdf> . It is important to note that Indiana's decisions for federal consistency purposes will be based on whether an existing state law, as described in Chapter 5 **of the Lake Michigan Coastal Zone Program Document**, would apply to the proposed action. Consistency will only be required of actions addressed by state laws, regardless of whether it is conducted by a local, state, or federal entity. Please refer to the cross-reference tables in ~~Chapter 5~~ **that document** for guidance on which activities are applicable to federal consistency.

The following federal actions are subject to federal consistency:

1. Federal agency activities;
2. Federal license or permit activities- activities by private enterprise or by state or local government which require federal approval of some form; and
3. Federal financial assistance to state and local governments.

A federal agency activity is any function performed by, or on behalf of, a federal agency in the exercise of its statutory responsibilities, but does not include the granting of a federal license or permit. However, the term includes federal development projects, which involve the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, use, or disposal of land or water resources. To be consistent with the CZMA, Indiana requires that any federal agency activity that affects Indiana's coastal zone be carried out in a manner that is "consistent to the maximum extent practicable" with state laws.

Federal license or permit requirements are detailed at 16 U.S.C.1456(c)(3)(A), and at 15 CFR Part 930 Subpart D. An applicant for a federal license or permit must, in its application to the federal agency, certify that its proposed activity complies with and will be conducted in a manner consistent with the Indiana Lake Michigan Coastal Program.

The requirements for federal financial assistance are detailed at 16 U.S.C. 1456(d), and at 15 CFR 930 Subpart F. This provision ensures that any unit of state or local government applying for federal financial aid for activities that affect the state's coastal zone receives such federal aid only when such activities are consistent with Indiana's laws (as described in Chapter 5 of the Lake Michigan Coast Zone Program Document at: <http://www.in.gov/dnr/lakemich/files/feis-iich5-ptvi.pdf>). Federal assistance is categorized in the Catalog of Federal Domestic Assistance, where it is grouped by agency and assigned a five-digit number. Table C reflects such grouping and numbering, and lists those activities which would potentially affect the coastal zone.

The federal consistency requirement encourages cooperation, coordination, and communication among governmental entities. Federal consistency also gives the state an effective voice in actions of the federal government affecting the state's coastal zone.

The Indiana Lake Michigan Coastal Program (LMCP) is a comprehensive networked program that relies on the appropriate state agencies to evaluate the federal actions outlined above for consistency. Each of the state agencies networked with the LMCP manages its own

responsibilities, issues its own permits, administers its own federal grant monies, etc. The DNR, as the lead state agency, coordinates federal consistency reviews with these state agencies and serves as the point of contact for consistency reviews.

The federal consistency process applies to activities that have a reasonably foreseeable effect on the coastal zone. ~~The coastal zone is defined in Chapter 3: The Coastal Program Area. The LMCP created a list of activities for each of the three categories of federal actions subject to consistency: 1) federal agency activities; 2) federal license or permit activities; and 3) federal financial assistance activities. These lists are Table A, Table B, and Table C respectively in Section III of this chapter. The federal consistency process may apply to activities that are not listed in this chapter if the unlisted activity will have reasonably foreseeable effects on the coastal zone.~~ For federal agency activities, if the federal agency finds that a proposed activity will affect the coastal zone, then the federal agency must prepare and submit a "consistency determination" to the **LMCP Environmental Unit**.

An applicant for a federal license or permit activity that affects the coastal zone must submit a "consistency certification" in the application to the federal agency, furnishing the **LMCP Environmental Unit** a copy of such certification and data and information necessary to demonstrate consistency. A consistency certification states that the proposed activity complies with and will be conducted in a manner consistent with Indiana's state laws.

For federal financial assistance for projects that will affect Indiana's coastal zone, the applicant must request a "consistency concurrence" from the **LMCP Environmental Unit**.

Federal consistency in Indiana is conducted through a network of state agencies coordinated through the following office:

~~Lake Michigan Coastal Program~~ **Environmental Unit**

~~Division of Nature Preserves~~ **Fish and Wildlife**

Department of Natural Resources

402 West Washington Street, Room ~~W267~~ **W273**

Indianapolis, IN 46204

Electronic mail: ~~coastal@dnr.in.gov~~ **environmentalreview@dnr.in.gov**

Under the network approach, whether a federal action is consistent with a state law is reviewed by the agency that administers the law. For example, the Indiana Department of Environmental Management reviews whether a federal action would violate Indiana's air pollution control law. If the law is one for which individual agency responsibility is indeterminate, the LMCP will identify itself or another agency to consider whether there is federal consistency.

Federal consistency review is completed when the **LMCP Environmental Unit** determines the federal action satisfies the state laws described in Indiana's program. A determination of federal consistency does not, however, relieve a person from compliance with state law.

C. Definitions

These definitions apply throughout this information bulletin:

“Coastal Zone” means Indiana’s portion of Lake Michigan and the watershed area draining into Indiana's portion of Lake Michigan as outlined in Exhibit C.

“Environmental Unit” means the Indiana Department of Natural Resources, Division of Fish and Wildlife’s Environmental Unit.

"General license" means a license for a regulated activity, the terms and conditions of which are defined by law, and to which a person may elect to adhere instead of completing a formal application process for the activity.

"Including" means including but not limited to.

"LMCP" means the Indiana Lake Michigan Coastal Program.

"Law" means a constitutional provision, judicial decision, administrative decision, statute, regulation, rule, or other legally binding document by which Indiana exerts control over private and public land and water uses and natural resources of the LMCP area. A "law" describes the term "enforceable policy" as used in 16 USC 1453(6a).

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

"Nonrule policy document" means a statement by a state agency that is issued under [IC 4-22-7-7](#). Included within the definition, under [IC 4-22-7-7\(a\)\(5\)](#), is a statement that:

- interprets, supplements, or implements a statute or rule;
- has not been adopted as a rule;
- is not intended to have the effect of law; and
- is used in conducting the agency's external affairs.

"Ordinary high watermark" means the line on the shore of a river, stream, or lake established by the fluctuations of water and indicated by physical characteristics: Examples of these physical characteristics include the following:

- A clear and natural line impressed on the bank;
- Shelving;
- Changes in the character of the soil;
- The destruction of terrestrial vegetation;
- The presence of litter or debris.

For Lake Michigan, the ordinary high watermark defines the extent of the beach and is delineated at 581.5 feet I.G.L.D., 1985 (582.252 feet N.G.V.D., 1929).

"Regulation" means a measure intended to have the force and effect of law and adopted by a federal agency under 5 USC 551 through 559.

"Rule" means a measure intended to have the force and effect of law and adopted by a state agency under [IC 4-22-2](#); a state agency statement, designed to have the effect of law that

implements, interprets, or prescribes either a law or policy or the organization, procedure, or practice requirements of an agency.

D. Exempted Activities

This section identifies activities exempted from federal consistency review. These activities are believed unlikely to have more than a minimal potential for harm to a land or water resource within ~~LMPC~~ the LMCP Area. As a prerequisite to the exemption, the ~~LMCP~~ **Environmental Unit** may require an assurance a person will conduct the activity in compliance with the terms of the general license:

- An activity conducted (even if supported in whole or part by a grant of federal financial assistance to a state or local government) under a general license approved by a State agency. Examples of a general license are as follows:
 - (1) The placement of beach nourishment to Lake Michigan under [312 IAC 6-6](#).
 - (2) The placement of a utility line crossing under [312 IAC 10-5-4\(c\)](#).
 - (3) The management of storm water run-off associated with construction under [327 IAC 15-5](#).
- An activity conducted under a general license approved by a federal agency. Examples are as follows:
 - (1) The placement of fill under Section 404 of the Clean Water Act (33 USC 1344), pursuant to a Nationwide Permit from the U.S. Army Corps, unless the activity is one for which Water Quality Certification under Section 401 of the Clean Water Act has been conditioned or denied by the Indiana Department of Environmental Management.
 - (2) Water quality certification and the placement of fill under Section 401 and Section 404 of the Clean Water Act under a Regional General Permit by the U.S. Army Corps and the Indiana Department of Environmental Management.
- An activity where the only required federal license results from the Section 106 Process (16 USC 470 and 36 CFR Part 800) of the National Historic Preservation Act (NHPA), unless the activity is in or within 100 feet of the ordinary high watermark of a navigable waterway identified in "Roster of Indiana Waters Declared Navigable or Nonnavigable", ~~20 Ind. Reg. 2920 (July 1, 1997)~~ **Third Amendment, 20080611-IR-312080426NRA (June 11, 2008)** and available online at <http://www.in.gov/nrc/policy/navigation.html>.
<http://www.in.gov/legislative/iac/20080611-IR-312080426NRA.xml.pdf> .
- Federal financial assistance to a state or local government where the purposes for which the assistance may be applied are limited to one or a combination of the following:
 - (1) Training and outreach, including transportation and the reimbursement of expenses associated with attendance at seminars and similar functions.
 - (2) The preparation or distribution of printed or electronic publications.
 - (3) The preparation of inventories or conduct of surveys that do not involve the physical disturbance of buildings, lands, waters, plants, or animals.
 - (4) The acquisition of equipment used primarily for the promotion of public health or safety.

E. Applications

This section governs applications to demonstrate federal consistency. No fee is required. No application form is required. The application must include information reasonably required to determine whether an activity would be compliant with state law. A federal consistency

application is initiated when the ~~LMCP~~ **Environmental Unit** receives this information for one of the following:

1. A consistency determination from a federal agency conducting an activity. **If the federal agency decides that the activity does affect Indiana's coastal zone, it prepares and submits to the environmental unit a consistency determination at least 60 days before final approval of the activity. If the agency decides that the activity does not affect the zone, the agency may have to provide the state (at least 60 days prior to final approval of the activity) with a negative determination under 15 CFR 930.35.**
 - * Indicate location of project (provide map), project start date and duration, and extent of work to be conducted onsite.
 - * Provide information for contact person including: name, title, mailing address, email address, phone and fax number.
 - * Letter should either state: "The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program" or "The proposed activity does not comply with Indiana's approved coastal management program"
2. A copy of ~~an~~ **the** application for a federal license, from the license applicant, accompanied by a federal consistency certification.
 - ~~* Provide a copy of the application for a federal license or permit.~~
 - * Provide information for contact person including: name, title, mailing address, email address, phone and fax number.
 - * Indicate location of project (provide map), project start date and duration, and extent of work to be conducted onsite.
 - * **If not included in the federal license or permit application, a detailed description of the proposed activity, its associated facilities, the coastal effects, documentation that the activity will be consistent with the relevant enforceable policies of the management program, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data must be submitted when a written description alone will not adequately describe the proposal. State or local government permit applications, but not permits, may be included.**
 - * Letter should either state: "The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program" or "The proposed activity does not comply with Indiana's approved coastal management program"
3. A copy of an application for federal financial assistance accompanied by a federal consistency certification.
 - * Copy of application for federal financial assistance (should indicate funding source drawn from and granting authority)
 - * Provide information for contact person including: name, title, mailing address, email address, phone and fax number.
 - * Indicate location of project (provide map), project start date and duration, and extent of work to be conducted onsite.
 - * Letter should either state: "The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program" or "The proposed activity does not comply with Indiana's approved coastal management program"

The letter should be sent to:

~~Federal Consistency~~ **Environmental Review** Coordinator

Indiana Department of Natural Resources

402 W. Washington St., Room ~~W267~~ **W273**

Indianapolis, IN 46204

or

~~lmcpfedcons@dnr.in.gov~~ environmentalreview@dnr.in.gov

An application for a federal consistency certification must be delivered to the ~~LMCP~~ **Environmental Unit** at least 60 days before a federal agency action or the grant of federal financial assistance. An application for a federal consistency certification must be delivered to the ~~LMCP~~ **Environmental Unit** at least 90 days before action on a federal license.

In order to facilitate prompt review by the ~~LMCP~~ **Environmental Unit**, the applicant is encouraged to make submittals in an electronic format that is compatible with agency systems.

F. Review Procedures

This section outlines review procedures by the ~~LMCP~~ **Environmental Unit** following the receipt of ~~an~~ **a complete application that includes all required information and supporting documents** for a federal consistency certification. Exhibit A and B present a graphical representation of this process and the associated timelines. An interested person must strictly comply with the timeframes described here. The applicant and the ~~LMCP~~ **Environmental Unit** may, however, enter a written agreement for the extension of a timeframe other than the timeframe described in section F9:

1. The information is filed and assigned a Federal Consistency Project (FCP) number.
2. The information (or a brief summary of the information) is distributed by electronic mail to each networked state agency for federal consistency review. Additional information posted to LMCP website.
3. A public notice of the proposed activity is published on the LMCP's website in the *LMCP Federal Consistency Register* **according to 15 CFR 930.42 and 15 CFR 930.61 (when appropriate) after a consistency determination has been received, except in cases where earlier public notice on the consistency determination by the Federal agency or State agency provides public notice.** ~~Where possible, the LMCP will provide a joint public notice with the relevant federal agency.~~ **The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data. The public will be able to provide comment on whether the project is consistent with Indiana's state laws.** The ~~LMCP~~ **Environmental Unit** shall maintain a list of interested parties and notify them when the *LMCP Federal Consistency Register* is updated. Interested parties may include libraries and designated local officials and any person who wishes to receive the information. The LMCP may establish subscription fee schedules to achieve reimbursement for costs associated with printing and mailing, the main distribution format will be electronic whenever possible.
4. The public may offer comments addressed to federal consistency. These comments may be considered by the ~~LMCP~~ **Environmental Unit**, however, only if received within 10 days of publication of notice on the website or of mailing of the notice, whichever occurs later. Any

person who asserts the activity would not meet federal consistency must state with reasonable particularity the state law or laws that would be violated.

5. The **LMCP Environmental Unit** shall provide the applicant, and any person who has offered timely comments, with written notice of its intention to concur or object to a certification of federal consistency:

- A. Within 40 days for a federal agency action or a grant of federal financial assistance.
- B. Except as provided in section F6, within 70 days for a federal license.

If the **LMCP Environmental Unit** intends to object to the certification, the **LMCP Environmental Unit** shall provide:

- (1) The rationale for the disagreement.
- (2) An explanation how the proposed activity is inconsistent with state law.
- (3) Alternative measures that, if implemented, would make the proposed activity consistent with state law.
- (4) If the objection is based on lack of sufficient information, the notice shall describe the **type nature** of information ~~needed~~ requested **and the necessity of having such information to determine the consistency of the activity with state law to determine consistency and the rationale for its need.**

6. If for federal permit/license consistency reviews the **LMCP Environmental Unit** notifies the applicant and the federal agency within ~~90~~ **30** days that additional time is required to complete the state's consistency review, the state automatically receives an additional 90 days to complete the review. Under this section, the **LMCP Environmental Unit** shall provide a written notice of its intention to concur or object within ~~170~~ **180** days of the filing of an application for a federal consistency determination.

7. Any person may supplement the record of the **LMCP Environmental Unit** within 5 days of issuance of the notice described in section F5 or F6. In addition, **if the Environmental Unit denies Consistency during the initial determination**, an applicant for the federal consistency certification may request informal review, **within 10 days of the denial**, from the Division of Hearings of the Natural Resources Commission. In the request, the applicant must specify ~~whether it seeks facilitated adjudication or mediation~~ **the reason for the request and specify why the decision is incorrect.** The Division of Hearings shall complete all proceedings and issue a federal consistency objection or concurrence within 10 days of the review request. If the Division of Hearings fails to enter a timely disposition, the **LMCP Environmental Unit** shall reassume jurisdiction and make a final objection or concurrence under section F8.

8. If no request for review is sought under section F7, the **LMCP The Environmental Unit** shall either object to or concur with the certification of federal consistency, **and issue the final determination.** For a federal agency action or a grant of federal financial assistance, the objection or concurrence must be made within 60 days of the filing of an application for a federal consistency certification. For a federal license, the objection or concurrence must be made within 90 days (or 180 days if an extension of time is obtained under section F6) of the filing. If the state fails to make a timely objection or concurrence under this section or section F7, the applicant is presumed to have received a certification of federal consistency.

9. If there is an objection under section F7 or F8, the **LMCP Environmental Unit** shall notify the federal agency, the Director of the Office of Coastal Resource Management, and the applicant (if other than a federal agency). The notice shall describe the right of administrative review to the Secretary of Commerce under 15 CFR Part 930. A federal agency or applicant who has not exercised the opportunity for informal review under section F7 does not waive the

right to review under this section. A person other than the federal agency or applicant lacks standing to seek administrative review under 15 CFR Part 930. There is no right to state judicial review of an objection to or concurrence with a federal consistency certification.

Please see attached *Exhibit A: Federal Permit/License Flowchart* and *Exhibit B: Federal Agency Action and Federal Financial Assistance Flowchart* for a graphical depiction of the federal consistency review process and associated timelines.

G. Emergencies

The **LMCP Environmental Unit** may authorize action without obtaining a certification of federal consistency where the action is reasonably required to respond to an emergency. An authorization under this part does not relieve a person from compliance with any law or from the possibility that remediation may subsequently be required to achieve federal consistency. Failure by a party to make timely application for a federal consistency certification does not constitute an emergency.

H. Supplemental Information

Appendix A contains detailed information regarding the requirements of Federal Consistency certification. Appendix A may be referenced in implementation of this information bulletin. Included are the following: Federal Agency Activities and Development Projects requiring Consistency certification (Section III. Table A), Federal License and Permit Actions requiring Consistency certification (Section III. Table B), and Federal Assistance requiring Consistency certification (Section III. Table C). Matrices 5-1 through 5-10 include additional information regarding applicable state laws (not included in this bulletin). Please reference LMCP program document and website at <http://www.in.gov/dnr/lakemich/6061.htm>.

I. HISTORY

The effective date of the Coastal Zone Management program in Indiana was August 12, 2002. The original version of this information bulletin was effective March 1, 2004. Amendments were made by the Natural Resources Commission on January 16, 2007, and these became effective on February 1, 2007.

J. Modifications to Information Bulletin

In order to accomplish the stated purpose of this information bulletin, and to remain current with federal law and state law, modifications will be required periodically. The LMCP and Division of Hearings are directed to regularly present the information bulletin to the Natural Resources Commission for review.

Appendix A

Chapter 11: Federal Consistency (Excerpted from Lake Michigan Coastal Program Document)
<http://www.in.gov/dnr/lakemich/files/lmcp-feis.pdf>

Section I

Introduction

~~The term "federal consistency" refers to the requirement of the Coastal Zone Management Act, (CZMA), 16 U.S.C. 1451, 1456 et seq., and implementing regulations at 15 CFR Part 930, that~~

certain federal actions that affect any land or water use or natural resource of a state's coastal zone be consistent with the state's federally approved coastal program. Indiana's coastal program is based upon existing state laws, which will be considered as Indiana's enforceable policies for the purposes of federal consistency. Therefore, federal consistency will be required for the state laws described in Chapter 5: Existing Management Authorities. It is important to note that Indiana's decisions for federal consistency purposes will be based on whether an existing state law, as described in Chapter 5, would apply to the proposed action. Consistency will only be required of actions addressed by state laws, regardless of whether it is conducted by a local, state, or federal entity. Please refer to the cross-reference tables in Chapter 5 for guidance on which activities are applicable to federal consistency.

The following federal actions are subject to federal consistency:

1. Federal agency activities;
2. Federal license or permit activities—activities by private enterprise or by state or local government which require federal approval of some form; and
3. Federal financial assistance to state and local governments.

The federal consistency requirement encourages cooperation, coordination, and communication among governmental entities. Federal consistency also gives the state an effective voice in actions of the federal government affecting the state's coastal zone.

The Indiana Lake Michigan Coastal Program (LMCP) is a comprehensive networked program that relies on the appropriate state agencies to evaluate the federal actions outlined above for consistency. Each of the state agencies networked with the LMCP manages its own responsibilities, issues its own permits, administers its own federal grant monies, etc. The DNR, as the lead state agency, coordinates federal consistency reviews with these state agencies and serves as the point of contact for consistency reviews.

The federal consistency process applies to activities that have a reasonably foreseeable effect on the coastal zone. The coastal zone is defined in Chapter 3: The Coastal Program Area. The LMCP created a list of activities for each of the three categories of federal actions subject to consistency: 1) federal agency activities; 2) federal license or permit activities; and 3) federal financial assistance activities. These lists are Table A, Table B, and Table C respectively in Section III of this chapter. The federal consistency process may apply to activities that are not listed in this chapter if the unlisted activity will have reasonably foreseeable effects on the coastal zone.

For federal agency activities, if the federal agency finds that a proposed activity will affect the coastal zone, then the federal agency must prepare and submit a "consistency determination" to the LMCP.

An applicant for a federal license or permit activity that affects the coastal zone must submit a "consistency certification" in the application to the federal agency, furnishing the LMCP a copy of such certification and data and information necessary to demonstrate consistency. A consistency certification states that the proposed activity complies with and will be conducted in a manner consistent with Indiana's state laws.

~~For federal financial assistance for projects that will affect Indiana's coastal zone, the applicant must request a "consistency concurrence" from the LMCP.~~

A detailed description of the federal consistency process for each category of activities is detailed below.

A. Federal Agency Activities

A federal agency activity is any function performed by, or on behalf of, a federal agency in the exercise of its statutory responsibilities, but does not include the granting of a federal license or permit. However, the term includes federal development projects, which involve the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, use, or disposal of land or water resources. To be consistent with the CZMA, Indiana requires that any federal agency activity that affects Indiana's coastal zone be carried out in a manner that is "consistent to the maximum extent practicable" with state laws.

Table A in Section III of ~~this~~ **Chapter 11 of the Lake Michigan Coastal Program Document** details those federal agency activities that the LMCP believes will require a consistency determination. The LMCP will monitor unlisted federal activities and will properly notify the appropriate federal agency when it discovers an unlisted activity requiring a consistency determination. Even so, the federal agency must at least provide the ~~LMCP~~ **Environmental Unit** with a consistency determination for all development projects (e.g. construction) in the coastal zone, whether such project is listed or unlisted.

Federal consistency requirements for federal agency activities are detailed at 16 U.S.C. 1456(c)(1) and (2), and at 15 CFR Part 930 subpart C. There is no categorical exemption for any federal activity. However, under certain circumstances the President may exempt a specific federal activity. (see 16 U.S.C. 1456(c)(1)(B)).

Consistency Determination and Review Process

The federal agency proposing an activity within or outside of Indiana's coastal zone decides if the proposed activity will affect any land or water use or natural resource of the coastal zone. All "development projects" (i.e. construction) within the coastal zone are construed as activities affecting the zone.

~~If the federal agency decides that the activity does affect Indiana's coastal zone, it prepares and submits to the LMCP a consistency determination at least 90 days before final approval of the activity. If the agency decides that the activity does not affect the zone, the agency may have to provide the state (at least 90 days prior to final approval of the activity) with a negative determination under 15 CFR 930.35.~~

A consistency determination for a federal agency activity affecting Indiana's coastal zone is an assertion by a federal agency that the activity will be conducted consistent with state laws to the maximum extent practicable. The words "maximum extent practicable" mean fully consistent, unless compliance is prohibited by existing law applicable to the federal agency's operations. The agency may also deviate from full consistency when unforeseen circumstances arising after

approval of the Indiana coastal program present the agency with a substantial obstacle that prevents complete adherence to state laws.

A consistency determination must include a detailed description of the activity, its coastal zone effects, and comprehensive data and information sufficient to support such determination.

~~The LMCP coordinates the state's review of the consistency determination with the appropriate state agencies. The state has 60 days from receipt (plus appropriate extensions, if granted) to concur with or object to the federal agency's consistency determination. Agreement is presumed if the LMCP does not respond (or request an extension) within 60 days. If the LMCP disagrees with a consistency determination, it must describe how the proposed activity will be inconsistent and should describe any alternative measures that would allow the activity to proceed. If the federal agency has failed to provide sufficient information, the LMCP must describe the nature of the information required and its necessity.~~

~~The LMCP will provide public notice according to [IC 4-21.5](#) and 15 CFR 930.42 after a consistency determination has been received, except in cases where earlier public notice on the consistency determination by the Federal agency or State agency provides public notice. Where possible, the LMCP will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data. The public will be able to provide comment on whether the project is consistent with Indiana's state laws.~~

~~If there is a dispute between the federal agency and the LMCP regarding the consistency determination, either party may seek the mediation services of the Secretary of Commerce or the Office of Ocean and Coastal Resource Management (OCRM).~~

B. Federal License or Permit Actions

Federal license or permit requirements are detailed at 16 U.S.C.1456(c)(3)(A), and at 15 CFR Part 930 Subpart D. An applicant for a federal license or permit must, in its application to the federal agency, certify that its proposed activity complies with and will be conducted in a manner consistent with the Indiana Lake Michigan Coastal Program. The consistency certification shall read as follows: "The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program." The LMCP, and therefore federal consistency requirements, are based on Indiana's existing state laws.

~~An applicant for a federal license or permit that affects Indiana's coastal zone should consult with the LMCP prior to submission of the consistency certification. Upon submission of the consistency certification, the applicant shall furnish the LMCP with data, including a detailed description of the activity, maps, and a brief assessment of probable effects to the coastal zone. The LMCP will coordinate with the appropriate state agency to review consistency.~~

Access to information contained in an application is governed by state law, [IC 5-14-3](#) (sometimes called the "Access to Public Records Act"). An applicant may seek to have records excepted from the Access to Public Records Act to the extent the records are confidential, contain trade secrets, or are otherwise exempted from disclosure at [IC 5-14-3-4](#). An applicant

who is dissatisfied with a status certification by the **LMCP Environmental Unit**, relating to public disclosure, may have the certification reviewed pursuant to the Indiana Administrative Orders and Procedures Act (AOPA).

Consistency Certification and Review Process

For an activity listed in Table B in Section III of ~~this Chapter~~ **11 of the Lake Michigan Coastal Program Document**, applicants for federal licenses or permits must submit a consistency certification in their application to the federal agency, furnishing the **LMCP Environmental Unit** a copy of such certification and data and information necessary to demonstrate consistency.

~~For an unlisted activity, an applicant is required to submit a consistency certification if: a) the LMCP decides that such activity will affect Indiana's coastal zone; b) the LMCP properly informs the federal agency, the applicant, and OCRM; and c) OCRM approves of the LMCP's decision. The federal agency and the applicant have 15 days from receipt of the LMCP decision to provide comments to OCRM. In the event of a dispute between a federal agency and the LMCP regarding whether a listed or unlisted federal license or permit activity is subject to consistency review, either party may seek mediation by the Secretary of Commerce.~~

~~The consistency certification consists of a statement in a letter to the LMCP that states, "The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program." The applicant must also furnish the LMCP with a sufficient project description and data described at 15 CFR 930.58 to demonstrate consistency.~~

~~Following the LMCP's receipt of the consistency certification and the required data, it will provide public notice according to [IC 4-21.5](#) and 15 CFR 930.61. Where possible, the LMCP will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data.~~

~~If the consistency review will take over three months, it must notify the applicant and the federal agency. The LMCP will concur or object to the consistency certification within six months.~~

If the same activity requiring a federal license or permit also requires a state permit, the issuance of a permit by the state will include and constitute a consistency decision.

The state will evaluate project consistency based on applicable state laws ~~as described in Chapter 5 of the LMCP. Consistency will only be required on activities that are subject to state laws. Please refer to the cross-reference tables in Chapter 5 for guidance on which activities are applicable to federal consistency.~~ Early coordination with the LMCP is encouraged for projects affecting the Coastal Program Area.

~~If the LMCP concurs with the consistency certification, it will notify the federal agency and the applicant immediately. The agency is then free to either issue or deny the federal license or permit. In the latter case, the federal agency must immediately notify the state and the applicant. If the LMCP objects to the consistency certification, it must notify the applicant, the federal~~

~~agency, and OCRM, and the federal agency must not issue the license or permit, unless the applicant successfully appeals to the Secretary of Commerce.~~

C. Federal Financial Assistance

The requirements for federal financial assistance are detailed at 16 U.S.C. 1456(d), and at 15 CFR 930 Subpart F. This provision ensures that any unit of state or local government applying for federal financial aid for activities that affect the state's coastal zone receives such federal aid only when such activities are consistent with Indiana's laws (as described in Chapter 5: Existing Management Authorities **of the Lake Michigan Coastal Program Document**).

Federal assistance is categorized in the Catalog of Federal Domestic Assistance, where it is grouped by agency and assigned a five-digit number. Table C reflects such grouping and numbering, and lists those activities which would potentially affect the coastal zone. The LMCP will coordinate these activities for consistency review, and will provide the list to federal agencies and units of State or local government empowered to undertake federally assisted activities that may affect the coastal zone.

Consistency Review Process

A unit of state or local government, or any related public entity, submitting an application for federal financial assistance for an activity affecting Indiana's coastal zone must obtain the **LMCP's Environmental Unit** consistency concurrence in order to receive such assistance. The applicant should submit the application for federal assistance to the **LMCP Environmental Unit**.

~~The LMCP will conduct the consistency review for federal financial assistance. The LMCP will decide which of the applications are for proposed activities that would affect Indiana's coastal zone, and coordinate with the appropriate state agency for consistency review. In the event of a dispute between a federal agency and the LMCP regarding whether a federal assistance activity is subject to consistency review, either party may request mediation by the Secretary of Commerce.~~

~~The LMCP can either concur with or object to the application based on the consistency of proposed actions within the application. The LMCP will notify the applicant and the federal agency of its decision within 60 days of receipt of application for federal assistance. Objections will also be sent to OCRM.~~

~~If the LMCP determines that the proposed project is consistent with state laws, the federal agency may approve or deny the request for assistance. If the federal agency denies the request, it must immediately notify the applicant and the LMCP. If the LMCP objects to the proposed project, the federal agency shall not approve assistance for the project, unless the applicant successfully appeals to the Secretary of Commerce.~~

Section II: CONFLICT RESOLUTION, APPEAL, AND SECRETARIAL REVIEW

Conflict Resolution

In the event of a dispute between the federal agency and Indiana over whether the federal activity, federal license or permit, or federal financial assistance affects the coastal zone or whether a consistency determination for a federal activity was correctly made, either party may

seek mediation by the Secretary of Commerce or through OCRM (15 CFR Subpart G). The responding party has the option of participating, but if it declines, it must indicate the basis for its refusal to participate. The Secretary of Commerce will attempt to encourage participation, but if unsuccessful will cease efforts to mediate. Judicial review is available to any party without having to exhaust the mediation process.

Appeal Process

The applicant for a federal license or permit or for federal financial aid who has been subject to a consistency objection by the **LMCP Environmental Unit** may appeal to the Secretary within 30 days of receipt of Indiana's objection. (15 CFR Subpart H). To appeal, the applicant should file a notice of appeal with the Secretary of Commerce, accompanied by a statement in support of the applicant's position and supporting data. The applicant should also send copies of these documents to the **LMCP Environmental Unit** and the federal agency involved.

If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the federal agency may issue the license or permit or grant the financial aid. This is called a Secretarial override. If the Secretary does not make either of these findings, the federal agency shall not approve the activity. A Secretarial override does not obviate the need for the applicant to obtain any permit or other authorization required by the state of Indiana.

Section III: Lists of Federal Activities Subject to Federal Consistency

Table A. Federal Agency Activities and Development Projects

Department of Defense- Secretary of the Army and the Army Corps of Engineers –
33 USC 404-426, 33 USC 471-472, 33 USC 540-633, 33 USC 701, 16 USC 460d, 42 USC 1962d-5, 10 USC 2801, 33 USC 1251

- Constructing, maintaining and improving channels or subsurface tunnels
- Dredging, storing, testing, sampling, dewatering, and disposing of dredged material
- Selection of storage, dewatering, and disposal sites for dredged material
- Building, maintaining, and repairing breakwaters, jetties, barriers, harbors, piers, docks
- Placing pipes or pipelines on, over, or under the lake bottom
- Establishment of harbor lines
- Creation of permanent sand bypass systems
- Creating habitat areas, including wetlands and offshore islands, from dredged material
- Beach nourishment and replenishment activities, reinforcing dunes and beaches
- Creation of man-made dunes and other man-made land
- Road and roadbed construction activities
- Building and maintaining erosion control structures
- Constructing navigational works, and marking anchorage grounds
- Constructing and maintaining dams and reservoirs, and providing hydroelectric power
- Constructing and maintaining flood control works, i.e. floodwalls, levees, diversion chan'ls
- Granting easements for rights-of-way for public roads on lands acquired by the United States for river and harbor and flood control improvements, 33 USC 558c
- Land acquisition or disposal, including sites for disposal of dredged material
- Ice management practices

- Cleanup activities in areas contaminated with hazardous waste, radioactive waste, toxic waste, active munitions, hazardous substances or materials, or other wastes or debris
- Design and management of construction for homes, schools, hospitals, day care centers, office buildings, airfields, warehouses, and training ranges for military and their families
- Purchase, management, and disposal of land for the Army and Air Force
- Providing engineering expertise to other fed agencies, state & local governments, and others
- Constructing, operating, and maintaining Army facilities
- Conducting projects that impact existing or planned research projects and contracts
- Coastal surveys, monitoring, aerial photos, Lidar, and coastal erosion mapping efforts
- Activities and other projects with the potential to impact coastal lands and waters
- Constructing, maintaining, and operating park and recreation facilities at water resource development projects

Department of Defense- Air Force, Army, and Navy – 10 USC

- Location, design, and acquisition of new or expanded defense installations (active or reserve status including associated housing, transportation, or other facilities)
- Improvements to military bases
- Base closures or realignments
- Military or Naval exercises
- Plans, procedures, and facilities for handling storage use zones
- Establishment of impact, compatibility, or restricted use zones
- Disposal of Defense property, including disposal and reuse plans for base closures
- Air Force, Army, or Navy manufacture, storage, transportation, treatment, or disposal of radioactive, hazardous, or other waste or hazardous substances, directly or by contractor
- Manufacture, transport, storage, or disposal of weapons, biological or nerve agents, nerve or mustard gas, napalm, explosives, nuclear power plant waste, etc.
- Causing or discovering the presence of nuclear powered vessels in the coastal zone or in other areas which could reasonably be expected to affect the coastal zone

Department of Interior- National Park Service – 16 USC 1, 16 USC460u

- Acquisitions of land and interest in land; granting rights-of-way
- Area and unit management
- Location, design, acquisition, construction, maintenance, and removal of facilities
- Removal of houses, including leaseback houses
- Entering into concession contracts, establishing and modifying concession facilities
- Activities as natural resources trustee in "Area of Concern", Lake County, IN

Department of Interior- U.S. Fish and Wildlife Service – 16 USC 742a

- Management of National Wildlife Refuges
- Management of waterfowl production areas
- Construction or modification of hatcheries, refuge facilities, office buildings, residences, laboratories, recreation facilities, water-control structures, and special purpose structures
- Acquisition of lands, wetlands, and other suitable habitat for migratory birds, endangered species, and other wildlife; granting rights-of-way
- Fish habitat creation, maintenance, and management

- Construction of visitor facilities and environmental education centers
- Construction of roadways, dikes, and dams
- Construction of sewerage facilities for domestic and hatchery effluent needs
- Recovery plans under Endangered Species Act, 16 USC 1531
- Nuisance species (i.e. zebra mussel, lamprey) control measures
- Granting easements for shooting and fishing activities under 16 U.S.C 661
- Classification and leasing of land under 16 U.S.C. 666g
- Activities as natural resources trustee in "Area of Concern", Lake County, IN

Department of Interior- U.S. Geological Survey – 43 USC 31

- Installation, operation, and maintenance of acoustic water velocity meters or other devices in waters of the coastal zone

Department of Interior- Bureau of Land Management - 43 USC 2

5 USCA Appx.1, Reorg. Plan 3 of 1946. IV

- Disposal and disposition of federal lands and structures, including lighthouses
- Acquisition of land or interest in land, construction of facilities

General Services Administration – 40 USC

- Acquisition, location, design, construction, development, management, and leasing (as lessor or lessee) of federal government property or buildings, leased or owned by federal government
- Disposition and disposal of federal surplus lands and structures

Department of Transportation- U.S. Coast Guard – 49 USC 108, 14 USC

- Location, design, construction, alteration, abandonment, or disposition of Coast Guard stations, bases, and lighthouses
- Location, placement, or removal of navigation devices which are not part of the routine operations under the Aids to Navigation program
- Expansion, abandonment, designation of anchorages, lighting areas, and shipping lanes
- Ice management practices and activities, including ice breaking
- Oil and hazardous material pollution response planning and response activities, and Area Contingency Plans developed under Section 311 of the Clean Water Act, 33 USC 1321, as amended by the Oil Pollution Control Act of 1990, 33 USC 2701
- Responses to the release of hazardous substances under CERCLA, 42 USC 9601
- Designation and management of Regulated Navigation Areas and Limited Access Areas identified in 33 CFR 165
- Designation of Security and Safety Zones and other activities under the Port and Waterways Safety Act, 33 USC 1221
- Construction, operation, maintaining, improving or expanding Vessel Traffic Services under the Port and Waterways Safety Act, 33 USC 1221
- Regulating the bulk transport by vessel of hazardous material or petroleum products

Department of Transportation- Federal Aviation Administration – 49 USC 106, 49 USC 40101, 49 USC 44501, 49 USC 44701, 49 USC 47501

- Location and design, installation, construction, operation, maintenance, quality assurance, testing, and demolition of airports and other aids to air navigation
- Development and implementation of programs to control aircraft noise and other environmental effects of civil aviation, and allocating use of airspace
- Procedures re transport of radioactive materials on passenger-carrying aircraft

Department of Transportation- Surface Transportation Board – 49 USC 10101

- Line transfers, leases, and trackage rights
- Line sales, including those to non-carriers
- Line constructions, including line crossings
- Design, construction, expansion, curtailment, or upgrading of railroad facilities or services, including bridges
- Removal of trackage; disposition of right-of-way
- Line abandonment, including Rails to Trails and Public Use Provision for Right-of-way
- Feeder Line Development Program

Department of Transportation-Federal Highway Administration – 49 USC 104, 49 USCS Appx 1653

- Highway, bridge, and causeway design, construction, maintenance, and repair
- Land acquisition
- Implementation of innovative or other technology affecting traffic control or flow
- Highway routing of hazardous materials

Department of Transportation- Maritime Administration – 49 USC 109, 40 USC 474, 46 USCS Appx 861, 46 USCS Appx 1101, 46 USC Appx 1601

- Port planning

Department of Transportation- Federal Railroad Administration 49 USC 103

- Orders dealing with dangers caused by unsafe rail transport of hazardous materials

Department of Commerce- National Oceanic and Atmospheric Administration - Reorganization Plan No.4 of 1970 at 5 USCS 903, 15 USC 1501, 33 USC 1251

- Placement of buoys, platforms, or other objects or structures in coastal waters
- Construction, installation, maintenance, or removal of lake level gauging stations or other structures

Environmental Protection Agency – 42 USC 6901, 42 USC 9601, 33 USC 1341, 42 USC 300h

- Activities conducted under CERCLA (Superfund), 42 USC 9601
- Activities conducted under Resource Conservation & Recovery Act, 42 USC 6901
- Sediment sampling and sediment testing
- Open disposal of dredged material
- Oil and hazardous material pollution response planning and response activities, and Area Contingency Plans developed under the Oil Pollution Control Act, 33 USC 1321

Department of Energy- Federal Energy Regulatory Commission – 42 USC 7171, 16 USC 796

- Delivery of oil or coal by ship
- Orders for furnishing of adequate service under the FPA, 16 USC 824f
- Licensee's exercise of eminent domain (as agent of the U.S.) under FPA, 16 USC 814
- Grant of right of eminent domain for right of way for natural gas pipeline under the Natural Gas Act, 15 USC 717f (h)

Department of Justice- U.S. Marshals Service – 28 USC 561, 28 USC 2001

- Disposition of property acquired by the Marshals Service

Nuclear Regulatory Commission - 42 USC 2011, 42 USC 5841

- The siting, construction and operation of nuclear generating stations, power plants, fuel storage, and processing centers
- Transportation of nuclear waste through the coastal zone or in any other area where such transport could reasonably be expected to affect the coastal zone

Federal Emergency Management Agency – 42 USC 4001, 42 USC 51

- Disaster-related activities (i.e. planning, mitigation activities, monitoring reconstruction) in the coastal zone or in any other area where such activities could be reasonably expected to affect the coastal zone

Table B. Federal License and Permit Actions

Department of Defense- Secretary of the Army, and Army Corps of Engineers

- Permits for construction of dams or dikes in or over navigable waters required under Section 9 of the Rivers and Harbors Act of 1899, 33 USC 401
- Permits for the construction of structures (i.e. piers, wharves, breakwaters, bulkheads, jetties, weirs, transmission lines, pipes, or pipelines) in, under, or over navigable waters required by Section 10 of the Rivers and Harbors Act of 1899, 33 USC 403
- Permits for excavating or dredging from navigable waters, or for the alteration or modification of the course, location, condition, or capacity of such waters, required by Section 10 of the Rivers and Harbors Act of 1899, 33 USC 403
- Permits for disposal of dredged or fill material into navigable waters required by Section 10 of the Rivers and Harbors Act of 1899, 33 USC 403
- Permits for the disposal of dredged or fill material into waters of the United States required by Section 404 of the Clean Water Act, 33 USC 1344
- Permits for the alteration or occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S., or of any piece of plant used in the construction of such work, or of any material composing such work, required by Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408
- Approval of plans for improvement made at private expense under USACE supervision pursuant to Section 1 of the Rivers and Harbors Act of 1902, 33 USC 565

Department of Energy- Federal Energy Regulatory Commission – 42 USC 7101

- Licenses, renewals, or amendments to licenses, or approvals for transfers of licenses or rights thereunder, for nonfederal hydroelectric projects and primary transmission lines under Sec. 3(11), 4(e), 8, and 15 of the Federal Power Act (FPA), 16 USC 796 (11), 797(e), 801, and 808, and under Sec. 405 of FPA, 16 USC 2701
- Granting exemptions from Federal Power Act (FPA) requirements, 16 USC 823a
- Applications for orders for interconnection of electric transmission facilities, and sales and exchanges of energy, under Section 202 of the FPA, 16 USC 824a
- Application for orders authorizing disposition, consolidation, or merger of facilities or any part thereof under Sec.203 of the FPA, 16 USC 824b
- Applications for physical connection orders under Section 210 of the FPA, 16 USC 824i
- Applications for transmission service orders under Section 211 of the FPA, 16 USC824j
- Regulation of transportation of natural gas, and the entities engaged in such, under Sec.1 (b) of the Natural Gas Act, 15 USC 717 (b)
- Orders for extension or improvement of natural gas transportation facilities, and orders to establish physical connection of transportation facilities with distributors under Sec. 7(a) of the Natural Gas Act (NGA), 15 USC 717f (a)
- Issuing certificates of public convenience and necessity for the construction and operation of interstate natural gas pipelines and pipeline facilities, and for the transportation of natural gas, under 7 (c) of the NGA, 15 USC 717 f (c)
- Issuing declaratory orders under the Administrative Procedure Act, 5 USC 554(e)
- Licensing of import and export of natural gas under Sec.3 of the NGA, 15 USC 717b
- Approval or denial of abandonment of natural gas facilities or service under Sec.7 (b) of the NGA, 15 USC 717f (b)
- Exemptions from orders prohibiting burning natural gas or petroleum products in certain situations, 15 USC 792

Department of Transportation- Coast Guard

- Approval of construction or modification of bridges, causeways, pipelines, or other structures over, on, or under navigable waters pursuant to Section 9 or 10 of the Rivers and Harbors Act, 33 USC 401, 403, and the Bridge Act, 33 USC 491
- Marine event permits issued under authority of 33 USC 1233, found at 33 CFR 100.15

Environmental Protection Agency

- National Pollutant Discharge Elimination System (NPDES) permits and other permits for federal installations discharges, sludge runoff, aquaculture permits and all other permits pursuant to Sections 401, 402, 405, and 318 of the Federal Water Pollution Control Act of 1972, 33 USC 1341, 1342, 1345, and 1328
- Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976, 42 USC 9601
- Permits pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 USC 6901
- Permits pursuant to the underground injection control program under Section 1424 of the Safe Drinking Water Act, 42 USC 300h * Indiana has primacy for Class II injection wells
- Permits pursuant to the Clean Air Act of 1976, 42 USC 7401
- Permits pursuant to the Marine Protection, Research, and Sanctuaries Act, 16 USC 1431

Department of Interior- U.S. Fish and Wildlife Service – 16 USC 742a

- Endangered species permits pursuant to the Endangered Species Act, 16 USC 1531
- Permits pursuant to the Migratory Bird Treaty Act, 16 USC 703
- Permits to impound water and coordination activities under the Fish and Wildlife Coordination Act, 16 USC 661
- Permits and cooperative agreements for use of lands for grazing, timber harvest, farming, and concessions, and agreements with States for operation of Service management units
- Permits and easements for rights-of-way
- Permits for the import-export of regulated wildlife and plants, including interstate shipment of injurious wildlife
- Permits for the taking or banding of migratory birds, including falcons and eagles

Department of Interior- National Park Service – 16 USC 1

- Permits for rights-of way
- Permits for scientific-collecting purposes
- Permits for special use of real property (including assets and resources or utilities)
- Agreements to permit concession operations

Nuclear Regulatory Commission

- Licensing, certification, and determination of the siting, construction, and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, 42 USC 2011, Title II of the Energy Reorganization Act of 1974, 42 USC 5841, and the National Environmental Policy Act of 1974, 42 USC 4321

Department of Transportation- Federal Aviation Administration – 49 USC 106, 49 USC 40101, 49 USC 44501, 49 USC 44701, 49 USC 47501,

- Permits, licenses, certifications, and other approvals for construction, operation, or alteration of airports
- Allocating use of airspace or otherwise permitting changes in air traffic resulting in increases of noise pollution over sensitive areas of the coastal zone

Department of Transportation- Surface Transportation Board – 49 USC 10101

- Permission to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way)
- Permission to construct, expand, alter, or abandon railroads
- Issuing certificates for water carrier authority
- Granting exemptions from rail regulation
- Granting exemptions from motor carrier regulation
- Rail regulation- emergency service orders
- Rail regulation- competitive access
- Motor carrier regulation- Bus company through-route requirements
- Intermodal regulation- Rail-Water connections for non-contiguous domestic trade

Department of Transportation- Federal Highway Administration 49 USC 104, 49 Appdx. USCS 1653

- Issuing safety permits regarding highway routing of hazardous materials

Department of Transportation- Research and Special Programs Administration 49 USC 5101

- Issuing, modifying, and terminating approvals under the Hazardous Materials Transportation Law (hazmat)
- Issuing, renewing, modifying, and terminating exemptions under hazmat
- Administrative determinations of whether state or local requirements are preempted under hazmat or are issued a waiver of preemption

Table C. Federal Assistance

Numbers refer to the Catalog of Federal Domestic Assistance Programs. Program descriptions can be found at the Catalog's website at www.gsa.gov/fdac.

Department of Agriculture

10.760 Water and Waste Disposal Systems for Rural Communities (Consolidated Farm and Rural Development Act, as amended, Section 306, 7 USC 1926.)

10.766 Community Facilities Loans and Grants (Consolidated Farm and Rural Development Act, as amended, Section 306, 7 U.S.C. 1926.)

10.769 Rural Development Grants (Consolidated Farm and Rural Development Act, Section 310B, as amended, 7 U.S.C. 1932)

10.770 Water and Waste Disposal Loans and Grants (Section 306C) (Consolidated Farm and Rural Development Act, Section 306C, 7 USC 1926(c), as amended; Food, Agriculture, Conservation, and Trade Act of 1990, Title XXIII, Public Law 101-624)

10.854 Rural Economic Development Loans and Grants (Rural Electrification Act of 1936, as amended, Title III, 7 U.S.C. 930-940c.)

10.901 Resource Conservation and Development (Public Law 97-98, 95 Stat. 1213.)

10.904 Watershed Protection and Flood Prevention (Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001, 33 U.S.C. 701b)

10.906 Watershed Surveys and Planning (Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001, 33 U.S.C. 701b)

Department of Commerce

11.300 Economic Development- Grants for Public Works and Infrastructure Development (Public Works and Economic Development Act of 1965, as amended, 42 USC3131, 3132, 3135, 3171)

11.304 Economic Development- Public Works Impact Program (Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3131, 3135)

11.405 Anadromous Fish Conservation Act Program (Anadromous Fish Conservation Act of 1965, as amended, 16 U.S.C. 757a through f; Reorganization Plan No. 4, 1970)

11.407 Interjurisdictional Fisheries Act of 1986 (Interjurisdictional Fisheries Act of 1986, as amended, 16 U.S.C. 4106)

11.427 Fisheries Development and Utilization Research & Development Grants & Coop Agreements (Saltonstall-Kennedy Act, as amended, 15 U.S.C. 713c-3(c))

11.463 Habitat Conservation (Fish and Wildlife Coordination Act of 1956, 16 USC 661; Coastal Wetlands Planning, Protection, and Restoration Act, 16 USC 3951; 33 USC 1901; Department of Commerce Appropriation Act of 1995)

Department of Defense

12.100 Aquatic Plant Control, 33 USC 610

12.101 Beach Erosion Control Projects (Rivers and Harbors Act of 1962, Section 103, as amended, 33 U.S.C. 426e-g)

12.104 Flood Plain Management Services (Flood Control Act of 1960, Section 206, as amended, 33 U.S.C. 709a)

12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works (Flood Control Act of 1946, Section 14, 33 U.S.C. 701r, as amended)

12.106 Flood Control Projects (Flood Control Act of 1948, Section 205, as amended, 33 U.S.C. 701s)

12.107 Navigation Projects (Rivers and Harbors Act of 1960, Section 107, as amended, 33 U.S.C. 577)

12.108 Snagging and Clearing for Flood Control (Flood Control Act of 1937, Section 2, as amended, 33 U.S.C. 701g)

12.109 Protecting, Clearing, and Straightening Channels (Rivers and Harbors Act of 1945, Section 3, as amended, 33 U.S.C. 603a)

12.110 Planning Assistance to States (Water Resources Development Act of 1974, Section 22, as amended, 42 U.S.C. 1962d-16)

12.610 Joint Land Use Studies (Defense Authorization Act, 10 U.S.C. 2391)

12.613 Growth Management Planning Assistance (Defense Authorization Act, 10 USC 2391)

Department of Housing and Urban Development (Sections refer to the National Housing Act)

14.218 Community Development Block Grants/ Entitlement Grants (Housing and Community Development Act of 1974, Title I, as amended, 42 U.S.C. 5301-5317)

14.219 Community Development Block Grants/ Small Cities Grants (Housing and Community Development Act of 1974, Title I, as amended, 42 U.S.C. 5301-5317)

14.246 Community Development Block Grants/ Economic Development Initiative (Housing and Community Development Act of 1974, Sec.108(q), as amended, 42 USC 5308(q)

14.866 Revitalization of Severely Distressed Public Housing (HUD Appropriations Act of 1993, Public Law 102-389)

Department of the Interior

15.605 Sport Fish Restoration (Federal Aid in Sportfish Restoration Act of 1950, as amended, 16 U.S.C. 777-777k)

15.611 Wildlife Restoration (Federal Aid in Wildlife Restoration Act of 1937, as amended, 16 U.S.C. 669-669b, 669-669I)

15.614 Coastal Wetlands Planning, Protection, and Restoration Act (Coastal Wetlands Planning, Protection, and Restoration Act, Section 305, Title III, 16 U.S.C. 3954)

15.615 Cooperative Endangered Species Conservation Fund (Endangered Species Act of 1973, as amended, 16 USC 1531)

15.616 Clean Vessel Act Pumpout Grant Program (Clean Vessel Act of 1992, Section 5604, 33 U.S.C. 1322, note, and 16 U.S.C. 777c and 777g)

15.617 Wildlife Conservation and Appreciation (Partnerships for Wildlife Act, Title VII, Sec.7105(g), 16 USC 3744(g))

15.904 Historic Preservation Fund Grants-in-Aid (National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470)

15.916 Outdoor Recreation- Acquisition, Development, and Planning (16 U.S.C. 1-4; Land and Water Conservation Fund Act of 1965, 16 U.S.C. 460d, 460l-4 to 460l-11, as amended)

15.919 Urban Park and Recreation Recovery Program (Urban Park and Recreation Recovery Act of 1978, Title 1, 16 USC 2501-2514)

Department of Transportation

20.005 Boating Safety Financial Assistance, 46 U.S.C. 13101-13110

20.006 State Access to the Oil Spill Liability Trust Fund (Oil Pollution Act of 1990, Sec.1012(d)(1), 33 USC 2712(d)(1))

20.007 Bridge Alteration (River and Harbor Act of 1899, Section 18, 33 U.S.C. 502; Bridge Act of 1906, Sections 4 and 5, 33 U.S.C. 494-5; Act of June 21, 1940, as amended; Truman-Hobbs Act, 33 U.S.C. 511-23)

20.106 Airport Improvement Program (Public Law 103-272)

20.205 Highway Planning and Construction, 23 U.S.C.

20.219 Recreational Trails Program (Transportation Equity Act for the 21st Century, Sec. 1101(a)(7); 23 U.S.C. 104(h); 23 U.S.C. 206)

20.500 Federal Transit Capital Improvement Grants, 49 U.S.C.5309

20.509 Public Transportation for Nonurbanized Areas, 49 U.S.C. 5311

20.514 Transit Planning and Research, 49 USC 5314(a)

20.600 State and Community Highway Safety (Highway Safety Act of 1966, as amended, 23 USC 401

20.801 Development and Promotion of Ports and Intermodal Transportation (Merchant Marine Act of 1920, Section 8, as amended, 46 USC 867; Merchant Marine Act of 1936, Sections 209 and 212, as amended, 46 USC 1119, 1122; Section 2, Public Law 96-371; Defense Production Act of 1950, as amended, 50 Appx. USC 2061, 2062, 2071-2073, 2081, 2091-2094, 2101-2110, 2121-2123, 2131-2135, 2151-2166; Executive Order 10480; Executive Order 12656

Environmental Protection Agency (EPA)

66.001 Air Pollution Control Program Support (Clean Air Act of 1977, Section 105, as amended, Clean Air Act Amendments of 1990, 42 U.S.C. 7405)

66.419 Water Pollution Control- State and Interstate Program Support (Clean Water Act, Section 106, as amended, 33 U.S.C. 1256)

66.432 State Public Water System Supervision (Public Health Service Act, as amended, 42 U.S.C. 201; Safe Drinking Water Act, as amended, 42 U.S.C. 300f)

66.433 State Underground Water Source Protection (Safe Drinking Water Act, as amended, 42 U.S.C. 300f)

66.454 Water Quality Management Planning (Clean Water Act, Sections 205(j) and 604(b), as amended, Water Quality Act of 1987, 33 U.S.C. 1285(j) and 33 U.S.C. 1384(b))

66.456 National Estuary Program (Clean Water Act, Section 320, as amended, 33 U.S.C. 1330)

66.458 Capitalization Grants for State Revolving Funds (Clean Water Act, as amended, Water Quality Act of 1987, Sections 601-607, 205(m), 33 U.S.C. 1381-1387, 33 U.S.C. 1285 (m))

66.460 Non-Point Source Implementation Grants (Clean Water Act, Section 319(h), 33 USC 1329(h))

66.461 Wetlands Protection- Development Grants (Clean Water Act, Section 104(b)(3), as amended, 33 USC 1254(b)(3))

66.463 National Pollutant Discharge Elimination System (NPDES) Related State Program Grants (Clean Water Act, Section 104(b)(3), as amended, 33 USC 1254(b)(3))

66.468 Capitalization Grants for Drinking Water State Revolving Fund (Safe Drinking Water Act Amendments of 1996, Section 130, 42 U.S.C. 300 j-12)

66.469 Great Lakes Program (Clean Water Act, Sections 104 and 118, 33 USC 1254, 33 USC 1268)

66.700 Consolidated Pesticide Enforcement Cooperative Agreements (Federal Insecticide, Fungicide, and Rodenticide Act, Section 23, as amended, 7 U.S.C. 136u)

66.701 Toxic Substances Compliance Monitoring Cooperative Agreements (Toxic Substances Control Act, Sections 28 and 404(g), as amended, 15 U.S.C. 2627 and 2684(g))

66.708 Pollution Prevention Grants Program (Pollution Prevention Act of 1990, Section 6605, 42 U.S.C. 13104)

66.801 Hazardous Waste Management State Program Support (Solid Waste Disposal Act, Section 3011, as amended, Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C. 6931)

66.802 Superfund State Site-Specific Cooperative Agreements (Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, Section 104, as amended, Superfund Amendments and Reauthorization Act (SARA) of 1986, as amended, 42 U.S.C. 9604)

66.804 State Underground Storage Tanks Program (Solid Waste Disposal Act, Section 2007(f)(2), as amended, and Section 8001(a); Resource Conservation and Recovery Act (RCRA) of 1976, as amended, Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6901 et seq.)

66.805 Leaking Underground Storage Tank Trust Fund Program (Solid Waste Disposal Act, Section 9003(h)(7), as amended; Section 8001(a); Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. 6901 et seq.; Superfund Amendments and Reauthorization Act (SARA) of 1986, as amended, 42 U.S.C. 9601 et seq.)

66.807 Superfund Innovative Technology Evaluation Program (SITE) (Comprehensive Environmental Response, Compensation, & Liability Act (CERCLA) of 1980, Sec 311(b), as amended, Superfund Amendments Reauthorization Act of 1986, as amended, 42 USC 9660(b)

66.808 Solid Waste Management Assistance (Solid Waste Disposal Act, Section 8001, as amended, Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. 6981)

66.809 Superfund State Core Program Cooperative Agreements (CERCLA, as amd., 42 USC 9601)

66.810 CEPP Technical Assistance Grants Program (Clean Air Act, Secs.103(b)(3),112(L)(4),

42 USC 7403(b)(3), 7412(L)(4); Toxic Substances Control Act, Secs.10(a),28(d), 15 USC 2609(a), 2627(d))

Department of Energy (DOE)

81.041 State Energy Program (Energy Policy and Conservation Act, Title III, Sections 361-366, Part C, 42 U.S.C. 6321-6326; Dept. of Energy Organization Act of 1977, as amended, 42 U.S.C. 7101; National Energy Conservation Policy Act of 1978, Public Law 95-619, Public Law 101-440; Balanced Budget Down Payment Act II of 1996, Public Law 104-134)

Federal Emergency Management Agency (FEMA)

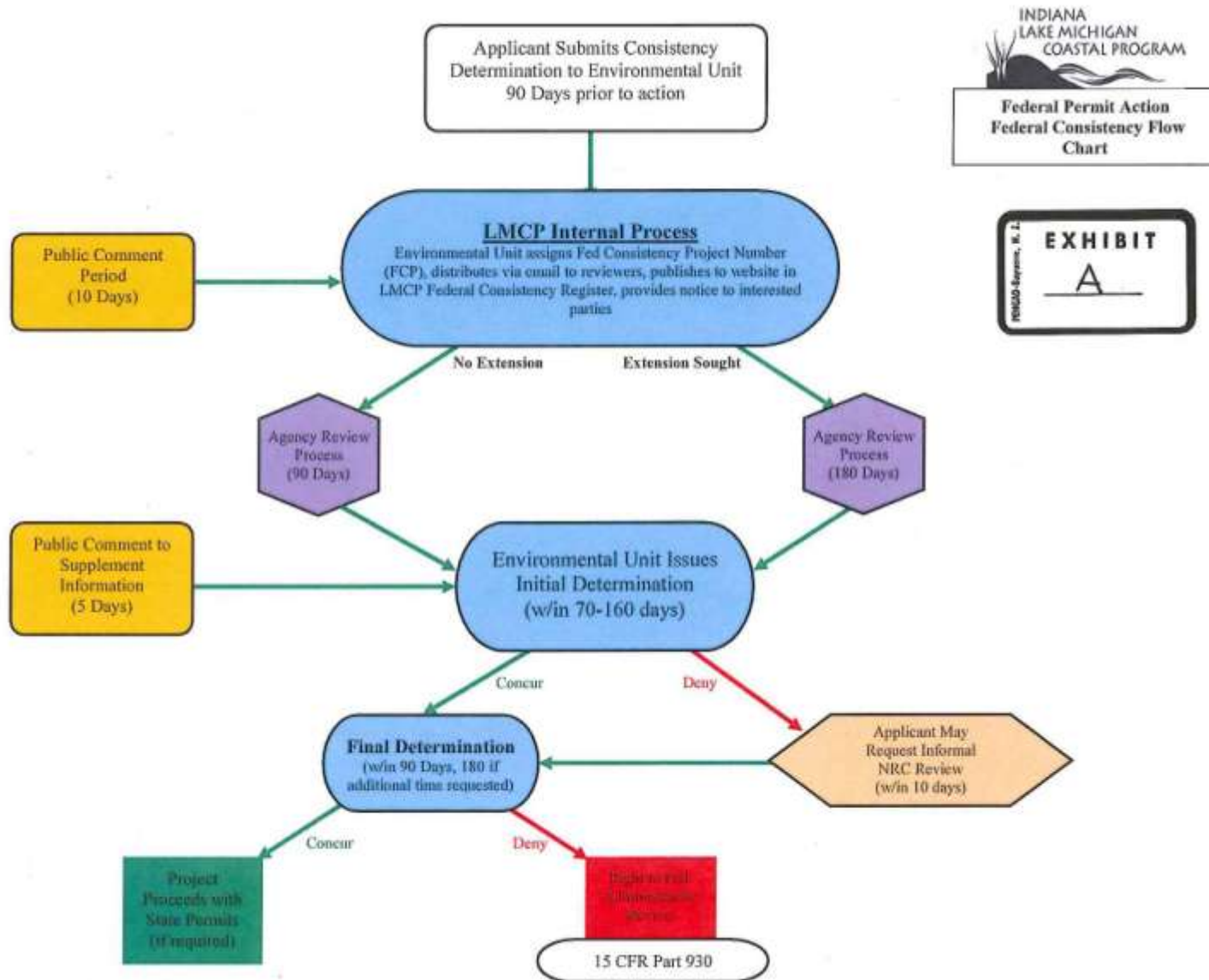
83.505 State Disaster Preparedness Grants

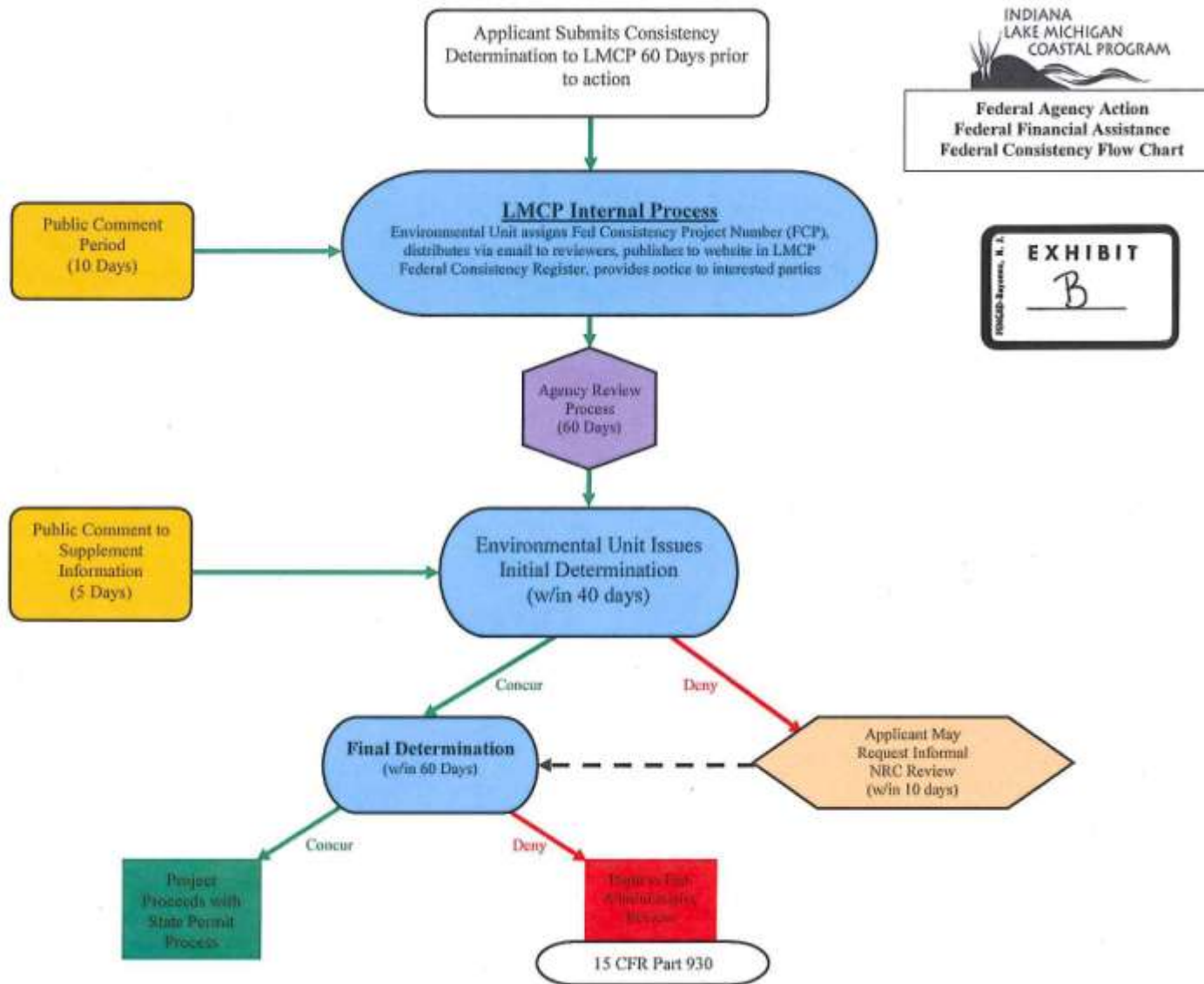
83.534 Emergency Management- State and Local Assistance (Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Stafford Act, Title VI, Sections 611 and 613, as amended, 42 U.S.C. 5196 and 5196b)

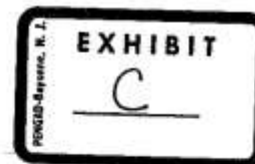
83.536 Flood Mitigation Assistance (National Flood Insurance Reform Act of 1994, Title V, Sections 553 and 554, 42 U.S.C. 4104c, 4104d, 4017)

Department of Health and Human Services (HHS)

93.887 Project Grants for Renovation or Construction of Non-Acute Health Care Facilities (Public Health Service Act, Section 1610 (b), 42 USC 300r (b))







Lake Michigan Coastal Program Area

